

JOSEPH M. WELCH (SBN: 259308)
BUCHALTER, A Professional Corporation
18400 Von Karman Ave. Suite 800
Irvine, CA 92612-0514
Telephone: (949) 760-1121
Email: jwelch@buchalter.com

VALERIE BANTNER PEO (SBN: 260430)
BUCHALTER, A Professional Corporation
55 Second Street, Suite 1700
San Francisco, CA 94105-3493
Telephone: 415.227.0900
Fax: 415.227.0770
Email: vbantnerpeo@buchalter.com

Attorneys for Creditor
BRADLEY TANKS, INC.

UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

In re
PG&E CORPORATION,

and

PACIFIC GAS AND ELECTRIC
COMPANY,

Debtor.

- ☐ Affects PG&E Corporation
☐ Affects Pacific Gas and Electric
Company
☒ Affects both Debtors

*All paper shall be filed in the Lead Case
No. 19-3088(DM)*

Case No. 19-30088 (DM)
Chapter 11
(Lead Case)

(Jointly Administered)

Re: Dkt No. 6320 and 7037

**BRADLEY TANKS, INC.'S CURE
OBJECTION AND RESERVATION OF
RIGHTS REGARDING THE
ASSUMPTION OF CONTRACTS IN
CONNECTION WITH THE DEBTORS'
AND SHAREHOLDER PROPONENTS'
JOINT CHAPTER 11 PLAN OF
REORGANIZATION**

Hearing: May 27, 2020 @ 10:00 a.m.
Time: 10:00 a.m. (Pacific Time)
Location: **Telephonic Appearances only**
450 Golden Gate Ave., 18th Fl.
Courtroom 17
San Francisco, CA 94102

1 Bradley Tanks, Inc. (“BTI”), a creditor and contract counter-party in the above-captioned
2 Chapter 11 cases commenced by PG&E Corporation and Pacific Gas and Electric Company
3 (together, the “Debtors”), submits its *Cure Objection and Reservation of Rights* (“Cure Objection”)
4 regarding the proposed assumption of contracts between BTI and the Debtors in connection with
5 the *Debtors’ and Shareholder Proponents’ Joint Chapter 11 Plan of Reorganization Dated*
6 *March 16, 2020* (“Plan”) [Dkt. No. 6320].

7 Through the Plan, Debtors seek Bankruptcy Court authority to assume certain executory
8 contracts between BTI and the Debtors at a \$0 cure amount, notwithstanding that the Debtors have
9 not paid all amounts owed to BTI. Accordingly, BTI requests that the Court deny the Debtors’
10 request for authority to assume the BTI agreements absent payment of the appropriate cure amount.

11 **I. BACKGROUND**

12 On January 29, 2019 (“Petition Date”), the Debtors commenced these Chapter 11 cases by
13 filing a voluntary petition for relief. The Debtors continue to operate as debtors-in-possession.

14 Prior to the Petition Date, the Debtors and BTI entered into that certain Master Service
15 Agreement No. C2421 (PG&E Contract No. 4400010661), dated on or about April 8, 2016 (the
16 “MSA”), pursuant to which BTI and the Debtors enter into various Contract Work Authorizations
17 (each a “CWA”). BTI provides services and delivers goods to the Debtors in accordance with each
18 CWA, and invoices the Debtors thereafter.

19 On April 18, 2019, BTI filed its claim seeking administrative priority for certain amounts
20 owed pursuant to 11 U.S.C. §503(b)(9) (the “Priority Claim”). The Priority Claim was assigned
21 claim number 2504 and subsequently allowed in the amount of \$10,033.35. *See Order Granting*
22 *Debtors’ First Omnibus Report and Objection to Claims Asserted Pursuant to 11 U.S.C.*
23 *§ 503(b)(9)* [Dkt. No. 3564] at Ex. A. As of the date of this Cure Objection, the Priority Claim
24 remains unpaid.

25 On October 18, 2019 BTI filed its proof of claim in the amount of \$918,817.95 as Claim
26 No. 77900 (“GUC Claim”). To avoid duplicate claims, the amount of the Priority Claim was
27 subtracted from the GUC Claim.

28 Thus, as of the date of this Cure Objection, there remains due and owing to BTI not less

1 than \$928,851.30, comprised of (i) the Priority Claim amount; (ii) the GUC Claim amount; and
2 (iii) any and all amounts owed to BTI on account of post-petition goods and services provided to
3 the Debtors for which payment has not yet been received.

4 On May 1, 2020, Debtors filed the *Schedule of Executory Contracts and Unexpired Leases*
5 *to be Assumed Pursuant to the Plan and Proposed Cure Amounts* (“Assumption Schedule”) as
6 Exhibit “B” to the *Notice of Filing of Plan Supplement in Connection With Debtors’ and*
7 *Shareholder Proponents’ Joint Chapter 11 Plan of Reorganization Dated March 16, 2020* (“Plan
8 Supplement”) [Dkt. No. 7037]. The Assumption Schedule identifies one CWA, as follows:

9 Non-Debtor Counterparty Name	Debtor Name	Title of Agreement	Effective Date of Agreement	Cure Amount
10 BRADLEY TANKS 11 INC.	PACIFIC GAS AND ELECTRIC COMPANY	CWA C13511 BRADLEY TANKS INC HYDROVAC AND DIRECTIONAL DRILLING MUD DISPOSAL BPO SLS4	2/6/2019	\$0.00

13 The above described CWA, together with the MSA and all active CWAs entered into thereunder,
14 are referred to herein as the “BTI Agreements.”

15 The Plan sets forth the following procedures for the assumption and rejection of executory
16 contracts:

17 As of, and subject to, the occurrence of the Effective Date and the payment of any
18 applicable Cure Amount, all executory contracts and unexpired leases of the
19 Reorganized Debtors shall be deemed assumed, unless such executory contract or
20 unexpired lease (i) was previously assumed or rejected by the Debtors, pursuant to
21 a Final Order, (ii) previously expired or terminated pursuant to its own terms or by
agreement of the parties thereto, (iii) is the subject of a motion to assume, assume
and assign, or reject filed by the Debtors on or before the Confirmation Date, or
(iv) is specifically designated as an executory contract or unexpired lease to be
rejected on the Schedule of Rejected Contracts.

22 Plan Art. VII § 8.1 (a).

23 The *Schedule of Executory Contracts and Unexpired Leases to be Rejected Pursuant to the*
24 *Plan*, attached as Exhibit “A” to the Plan Supplement, does not identify any agreement between the
25 Debtors and BTI. Therefore, based on Article VIII of the Plan, Debtors may intend to assume all
26 contracts between BTI and the Debtors, regardless of whether the agreement is specifically
27 identified on the Assumption Schedule.

28 BTI has been communicating informally with Debtors’ counsel regarding these matters and

1 hopes to continue those discussions with the goal of reaching a resolution before the May 27th Plan
2 confirmation hearing. BTI files this Cure Objection in an abundance of caution, to ensure all of its
3 rights are reserved.

4 **II. ARGUMENT**

5 Before assuming an executory contract, the Debtors must cure all monetary defaults under
6 the subject contracts. 11 U.S.C. § 365(b)(1). The Plan provides that cure amounts will be paid on
7 the effective date, provided there is no unresolved dispute. Plan §8.2(a). Thus, to assume the BTI
8 Agreements, Debtors must pay all sums outstanding as of the proposed date of assumption (i.e.
9 both pre and post-petition amounts owed), and cure any related default.

10 The Debtors erroneously assert that the cure amount associated with the BTI Agreements
11 is \$0, despite the allowed Priority Claim and the filed GUC Claim. Moreover, the Plan provides
12 that, on the Effective Date, “[a]ny proofs of Claim filed with respect to an executory contract or
13 unexpired lease that has been assumed or assumed and assigned shall be deemed disallowed and
14 expunged, without further notice to or action, order, or approval of the Bankruptcy Court.” Plan
15 § 8.2 (e).

16 BTI objects to the Debtors’ asserted \$0 cure and further objects to the expungement of the
17 GUC Claim before the appropriate cure amount has been paid to BTI. Unless and until the Debtors
18 cure all defaults, no executory contract between the Debtors and BTI may be assumed.

19 **III. CONCLUSION**

20 For the reasons set forth above, BTI respectfully requests that the Court deny the Debtors’
21 request for authority to assume any BTI Agreement absent cure of all outstanding amounts due and
22 owing to BTI.

23 DATED: May 15, 2020

BUCHALTER, PC

25 By: /s/ Valerie Bantner Peo
26 Valerie Bantner Peo, Esq.
27 Attorneys for Bradley Tanks, Inc.
28